



GENERAL SERVICES ADMINISTRATION

48 CFR Parts 502, 509, 511, 512, 514, 532, 536, 538, and 552

[GSAR Case 2021-G510; Docket No. GSA-GSAR 2021-0026; Sequence No. 1]

RIN 3090-AK37

General Services Administration Acquisition Regulation (GSAR); Updating References to Commercial Items

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Final rule.

SUMMARY: The General Services Administration (GSA) is issuing a final rule amending the General Services Administration Acquisition Regulation (GSAR) to conform to changes in the Federal Acquisition Regulation (FAR) that reflect an updated "commercial item" definition pursuant to a section of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019.

DATES: Effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Carroll at 817-253-7858 or gsarpolicy@gsa.gov, for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at 202-501-4755. Please cite GSAR Case 2021-G510.

SUPPLEMENTARY INFORMATION:

I. Background

This final rule amends the General Services Administration Acquisition Regulation (GSAR) to change instances of "commercial item(s)" with commercial product(s), commercial services(s), or both commercial product(s) and commercial service(s) to match similar actions taken in the Federal Acquisition Regulation (FAR).

FAR Case 2018-018 was published as a final rule at 86 FR 61017 on November 4, 2021, to implement section 836 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019 to separate the definition of "commercial item" into the definitions of "commercial product" and "commercial service."

It is important to note that the amendment to separate "commercial item" with "commercial product" and "commercial service" does not expand or shrink the universe of products or services that the Government may procure using GSAR part 512, nor does it change the terms and conditions vendors must comply with.

This rule does not add any new solicitation provisions or contract clauses. This rule merely replaces the term "commercial item(s)" with "commercial product(s)," "commercial service(s)," "commercial product(s) or commercial service(s)," or "commercial product(s) and commercial service(s)" in the GSAR including in part 552,

as appropriate. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

II. Authority for This Rulemaking

Title 40 of the United States Code (U.S.C.) Section 121 authorizes GSA to issue regulations, including the GSAR, to control the relationship between GSA and contractors.

III. Discussion and Analysis

As changed by FAR Case 2018-018, and as required by section 836 of the NDAA for FY 2019, this final rule replaces instances of commercial item(s) with commercial product(s), commercial service(s), or both commercial product(s) and commercial service(s).

This final rule also replaces all instances of "non-commercial" and "noncommercial" with "other than commercial" as it relates to this rule. This is an editorial change and will provide consistent language to the FAR and throughout the GSAR.

Other minor editorial changes are made in this final rule to provide consistent language.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits

(including potential economic, environmental, public health and safety effects, distributive impacts, and equity).

E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been reviewed and determined by OMB not to be a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

V. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a "major rule" may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. A major rule cannot take effect until 60 days after it is published in the Federal Register. This rule has been reviewed and determined by OMB not to be a "major rule" under 5 U.S.C. 804(2).

VI. Notice for Public Comment

The statute that applies to the publication of the GSAR is the Office of Federal Procurement Policy statute (codified at title 41 of the United States Code). Specifically, 41 U.S.C. 1707(a)(1) requires that a

procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This rule is not required to be published for public comment, because GSA is not issuing a new regulation; rather, this rule is merely an editorial change and will provide consistent language to the FAR (pursuant to section 836 of the John S. McCain National Defense Authorization Act for Fiscal Year 2019) throughout the GSAR. The rule does not expand or shrink the universe of products or services that the Government may procure using GSAR part 512, nor does it change the terms and conditions vendors must comply with.

This rule does not add any new solicitation provisions or contract clauses. This rule merely replaces the term "commercial item(s)" with "commercial product(s)," "commercial service(s)," "commercial product(s) or commercial service(s)," or "commercial product(s) and commercial service(s)" in the GSAR including in part 552, as appropriate. It does not add any new burdens because the case does not add or change any requirements with which vendors must comply.

VII. Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) does not apply to this rule, because an opportunity for public comment is not required to be given for this rule under 41 U.S.C. 1707(a)(1) (see Section VI. of this preamble). Accordingly, no regulatory flexibility analysis is required and none has been prepared.

VIII. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 502, 509, 511, 512, 514, 532, 536, 538, and 552

Government procurement.

Jeffrey Koses,
Senior Procurement Executive,
Office of Acquisition Policy,
Office of Government-wide Policy,
General Services Administration.

Therefore, GSA amends 48 CFR parts 502, 509, 511, 512, 514, 532, 536, 538, and 552 as set forth below:

1. The authority citation for 48 CFR parts 502, 509, 511, 512, 514, 532, 536, 538, and 552 continues to read as follows:

Authority: 40 U.S.C. 121(c).

PART 502—DEFINITIONS OF WORDS AND TERMS

502.101 [Amended]

2. Amend section 502.101 in the introductory text by—
- a. Removing the words “that meet” and adding the words “that meets” in its place;
 - b. Removing the words “commercial item” and adding the words “commercial products and commercial services” in its place; and
 - c. Removing the word “supply” and adding the words “product” in its place.

PART 509—CONTRACTOR QUALIFICATIONS

509.405-1 [Amended]

3. Amend section 509.405-1 by removing from paragraph (b)(6) “commercial items.)” and adding “commercial products and commercial services).” in its place.

PART 511—DESCRIBING AGENCY NEEDS

511.602 [Amended]

4. Amend section 511.602 by removing from introductory text of paragraph (d) “any items” and adding “any product or service” in its place.

PART 512—ACQUISITION OF COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

5. Revise the heading for part 512 to read as set forth above.

6. Revise the heading of subpart 512.3 to read as follows:

Subpart 512.3—Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Products and Commercial Services

512.301 [Amended]

7. Amend section 512.301 by—

a. Removing from the section heading and paragraph (a) introductory text “commercial items” and adding “commercial products and commercial services” in its place;

b. Removing from paragraph (a)(1) “Acquisition of Commercial Items” and “commercial items” and adding “Acquisitions of Commercial Products and Commercial Services” and “commercial products and commercial services” in their places, respectively;

c. Removing from paragraph (a)(2) “Commercial Items” and “commercial item” and adding “Commercial Products and Commercial Services” and “commercial products and commercial services” in their places, respectively;

d. Removing from paragraph (b) “Commercial Items” and adding “Commercial Products and Commercial Services” in its place; and

e. Removing from paragraph (d)(1) "commercial items" and adding "commercial products and commercial services" in its place.

PART 514-SEALED BIDDING

514.201-2 [Amended]

8. Amend section 514.201-2 by removing from paragraph (b) "Commercial Items" and adding "Commercial Products and Commercial Services" in its place.

514.270-1 [Amended]

9. Amend section 514.270-1 by removing "FAR 3.302" and adding "FAR 2.101" in its place.

514.270-4 [Amended]

10. Amend section 514.270-4 in paragraph (d)(3)(ii) by removing "commercial items" and adding "commercial products" in its place and removing the word "etc.".

514.270-7 [Amended]

11. Amend section 514.270-7 by removing from paragraph (d) "item" everywhere it appears and adding "product" in its place.

PART 532-CONTRACT FINANCING

12. Revise the heading of subpart 532.1 to read as follows:

Subpart 532.1-Financing for Other Than a Commercial Purchase

532.908 [Amended]

13. Amend section 532.908 by removing from paragraph (b)(2) "not for commercial items" and adding "for other than commercial products or commercial services" in its place.

PART 536-CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

536.7104 [Amended]

14. Amend section 536.7104 by removing "services or items" and adding "services or supplies" in its place.

PART 538-FEDERAL SUPPLY SCHEDULE CONTRACTING

538.271 [Amended]

15. Amend section 538.271 by removing from paragraph (a) "commercial items as defined in FAR 2.101" and adding "commercial products and commercial services" in its place.

538.273 Amended]

16. Amend section 538.273 by-

a. Removing from paragraph (b) introductory text "Commercial Items" and adding "Commercial Products and Commercial Services" in its place;

b. Removing from paragraph (c) introductory text "Evaluation-Commercial Items" and adding "Evaluation-Commercial Products and Commercial Services" in its place;

c. Removing from paragraph (c)(1) "Commercial Items" and adding "Commercial Products and Commercial Services" in its place;

d. Removing from paragraph (d) introductory text "Conditions-Commercial Items" and adding "Conditions-Commercial Products and Commercial Services" in its place;

e. Removing from paragraph (d)(2) "contemplate items" and adding the word "contemplate products" in its place;

f. Removing from paragraphs (d)(19) and (32) "for items" and adding "for products" in its place; and

g. Removing from paragraph (d)(35) "when items" and adding "when products" in its place.

538.7003 [Amended]

17. Removing from paragraph (a) "Conditions - Commercial Items" and adding "Conditions - Commercial Products and Commercial Services" in its place.

PART 552-SOLICITATION PROVISIONS AND CONTRACT CLAUSES

18. Amend section 552.212-4 by revising the section heading, clause heading, and the date of the clause to read as follows:

552.212-4 Contract Terms and Conditions-Commercial Products and Commercial Services (FAR DEVIATION) .

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CONTRACT TERMS AND CONDITIONS-COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES

(FAR DEVIATION) ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE

OF PUBLICATION IN THE FEDERAL REGISTER]) .

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19. Amend section 552.212-71 by-

a. Revising the section heading, clause heading, and date of the clause; and

b. In paragraph (a) introductory text:

i. Removing "items or components" and adding "products, including commercial components, and commercial services" in its place; and

ii. Removing from the last sentence "The clauses" and adding "The GSAR clauses" in its place.

The revisions read as follows:

552.212-71 Contract Terms and Conditions Applicable to GSA Acquisitions of Commercial Products and Commercial Services.

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CONTRACT TERMS AND CONDITIONS APPLICABLE TO GSA ACQUISITIONS OF
COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES ([INSERT ABBREVIATED MONTH AND
YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]).

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20. Amend section 552.212-72 by—

a. Revising the section heading, clause heading, and date of the clause; and

b. Removing from the introductory text of the clause "commercial items or components" and adding "commercial products, including commercial components, and commercial services" in its place.

The revisions read as follows:

**552.212-72 Contract Terms and Conditions Required To
Implement Statutes or Executive Orders Applicable to GSA
Acquisition of Commercial Products and Commercial Services.**

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CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR
EXECUTIVE ORDERS APPLICABLE TO GSA ACQUISITION OF COMMERCIAL PRODUCTS AND
COMMERCIAL SERVICES ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE
OF PUBLICATION IN THE FEDERAL REGISTER])

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21. Amend section 552.232-25 by:

a. Revising the date of the clause; and

b. Removing from paragraph (a) (5) introductory text
"Commercial Items" and adding "Commercial Products and
Commercial Services" in its place.

The revision reads as follows:

552.232-25 Prompt Payment.

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PROMPT PAYMENT ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF
PUBLICATION IN THE FEDERAL REGISTER])

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22. Amend section 552.238-75 by—

a. Revising the section heading, clause heading,
and date of the clause; and

b. In paragraph (a):

i. Revising the first sentence;

ii. Removing from the second sentence "complexity of items" and adding "complexity of products or services" in its place; and

iii. Removing from the last sentence "the item(s)" and adding "the products or services" in its place.

The revisions read as follows:

552.238-75 Evaluation-Commercial Products and Commercial Services (Federal Supply Schedule).

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EVALUATION-COMMERCIAL PRODUCTS AND COMMERCIAL SERVICES (FEDERAL SUPPLY SCHEDULE) ([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])

(a) The Government may make multiple awards for the supplies or services offered in response to this solicitation that meet the commercial product or commercial service definition in FAR clause 52.202-1. * * *

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23. Amend section 552.238-78 by:

a. Revising the date of the clause; and

b. Removing from paragraph (d) introductory text "an item's" and adding "an product's" in its place.

The revision reads as follows:

552.238-78 Identification of Products That Have Environmental Attributes.

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IDENTIFICATION OF PRODUCTS THAT HAVE ENVIRONMENTAL ATTRIBUTES ([INSERT
ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER])

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24. Amend section 552.238-82 by-

- a. Revising the date of the clause;
- b. Removing form paragraph (b)(1)(vii) "Commercial Items" and adding "Commercial Products and Commercial Services" in its place; and
- c. Removing from Alternate II, paragraph (b)(1)(v), "Commercial Items" and adding "Commercial Products or Services" in its place.

The revision reads as follows:

552.238-82 Modifications (Federal Supply Schedules).

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MODIFICATIONS (FEDERAL SUPPLY SCHEDULES) ([INSERT ABBREVIATED MONTH AND
YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER])

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25. Amend section 552.238-111 by-

- a. Revising the date of the clause; and
- b. Removing form paragraph (c) "Commercial Items" and adding "Commercial Products and Commercial Services" in its place.

The revision reads as follows:

552.238-111 Environmental Protection Agency Registration Requirement.

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ENVIRONMENTAL PROTECTION AGENCY REGISTRATION REQUIREMENT ([INSERT
ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN THE
FEDERAL REGISTER])

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26. Amend section 552.238-114 by—

- a. Revising the date of the clause; and
- b. Removing form paragraph (a)(1) "Commercial Item"

and adding "Commercial Products and Commercial Services" in
its place.

The revision reads as follows:

**552.238-114 Use of Federal Supply Schedule Contracts by
Non-Federal Entities.**

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USE OF FEDERAL SUPPLY SCHEDULE CONTRACTS BY NON-FEDERAL ENTITIES
([INSERT ABBREVIATED MONTH AND YEAR 30 DAYS AFTER DATE OF PUBLICATION IN
THE FEDERAL REGISTER])

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